IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7826 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT RAMBHAI PATEL

Versus

JYOTIKABEN WD/O P C PATEL

Appearance:

MR RA PATEL for Petitioners

MR BS PATEL for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/01/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners challenge the judgment and order dated 29th March, 1989 passed by the State Government [Additional Chief Secretary, Revenue Department (Appeals)] in Revision Application No. 390 of 1984.

The dispute pertains to the lands bearing Survey Nos. 1715/2 admeasuring 32 gunthas and No. 1715/4 admeasuring 16 gunthas, situated at Karamsad, Taluka-Anand, District Kheda [now District-Anand]. The said lands belonged to one Rambhai Patel and one Chhotubhai Motibhai Patel was the tenant thereof. In the proceedings under section 32-G of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'], the sale in favour of the said tenant Chhotubhai Motibhai Patel was held to be ineffective. In the proceedings under Section 32-P of the Act, the said lands were given to the present petitioners, the sons of the owner Rambhai Patel for personal cultivation. The respondent no. 1, the son of the tenant-Chhotubhai Motibhai Patel on 1st September, 1976 made an application to the Mamlatdar & ALT, Anand to the effect that the said pieces of land which were given to the petitioners for personal cultivation were not being cultivated personally by the petitioner. Instead, the said lands were given over to one Kantibhai Narayanbhai for cultivation. The respondent no. 1, therefore, claimed possession of the said land. Pursuant to the said application, proceedings were initiated by the Mamlatdar & ALT under sections 32-P/84-C of the Act. After issuing notice to the parties and giving them opportunity of leading evidence, and after hearing the parties, the Mamlatdar & ALT was, under his order dated 19th October, 1977, pleased to hold that the petitioners were not cultivating the said lands personally; the petitioners had committed breach of section 32-P (7) of the Act. The Mamlatdar & ALT, therefore, order eviction of the petitioners from the lands and to hand-over possession of the same to the respondent no. 1. Feeling aggrieved, the petitioners preferred Tenancy Appeal No. 2237 of 1979 before the Deputy Collector, Kheda which was dismissed on 5th January, 1982. Feeling aggrieved, the petitioners preferred Revision Application No.834 of 1982 before the Gujarat Revenue Tribunal. The said Tribunal, under its decision dated 21st September, 1984 held that the said Tribunal had no jurisdiction in the subject matter and returned the Revision Application for presentation before the appropriate forum. Since then, the petitioners preferred Revision Application No. 390 of 1984 before the State Government which has been dismissed on 4th January, 1988. Feeling aggrieved, the petitioners preferred Review Application No.SRD/HKM/390/84 before the State Government which too was rejected on 29th March, 1989. Feeling aggrieved, the petitioners have preferred the present petition.

Mr. Patel has relied upon the definition of `personal cultivation' as it occurs in sub-section (6) of Section 2 of the Act. He has submitted that to cultivate by hired labour or by servants on payment of wages in cash or kind shall amount to personal cultivation within the meaning of sub-section (6) of Section 2 of the Act. He has further submitted that the petitioners have led evidence to establish that the petitioners were cultivating the said lands by hired labour. The petitioners, therefore, ought to have been held to have cultivated the lands personally. Mr. Patel has submitted that all the authorities below have failed to appreciate the evidence correctly and have recorded a finding which is perverse. The said finding, therefore, requires to be interfered with. Mr. Patel has read over the evidence of the witness Kantibhai Narayanbhai and has submitted that the evidence given by the said witness Kantibhai Narayanbhai is sufficient to hold that the said Kantibhai Narayanbhai had cultivated the said lands as a hired labour. The petitioners, therefore, ought to have been held to have cultivated the lands personally. He has also submitted that the authorities below have erred in making a composite order of eviction under clause (b) of sub-section (7) of Section 32-P and disposal of the land under Section 84-C of the Act.

I see no substance in either of the contentions raised by Mr. Patel. I have perused the evidence of the above referred Kantibhai Narayanbhai and also the evidence given by the petitioner no. 1-Chandrakant Rambhai. Except the said oral evidence, the petitioners have not produced any evidence to indicate that they have been cultivating the said lands personally. They have not shown any expenditure incurred by them or the receipts for sale of agricultural produce or the proceeds thereof. I am, therefore, unable to hold that the finding recorded by the Mamlatdar & ALT, confirmed by the appellate and revisional authorities is perverse, as contended by Mr. Patel. In view of the concurrent finding recorded by all the authorities below, the order of eviction made under clause (2) of section 32 (7) of the Act is required to be held to have been made in consonance with the said proviso. The order of disposal of the land in accordance with Section 84-C of the Act also is in consonance with the said clause (b).

In view of the above discussion, the petition is dismissed. Rule is discharged. Interim stay stands vacated.

[Ms. R.M Doshit, J.]

Prakash*